

To: Hon. David F. Levi, Chair
Standing Committee on Rules of Practice and Procedure

From: Hon. Susan C. Bucklew, Chair
Advisory Committee on Federal Rules of Criminal Procedure

Subject: Technical Amendment Correcting Cross-Reference in Criminal Rule 45

Date: June 5, 2007 (Revised June 28, 2007)

The restyling of the Civil Rules has created an unanticipated problem with the cross references in Criminal Rule 45(c), which governs computing and extending time. The Supreme Court has approved and transmitted to Congress an amendment to Criminal Rule 45(c) that clarifies the method of extending time. Both current Rule 45(c) and the amendment refer to service made in the manner provided under Civil Rule 5(b)(2)(B), (C), or (D). The restyling of the Civil Rules renumbers the provisions to which the current rule and the amendment refer as 5(b)(2)(C), (D), (E), and (F).

Rule 45(c) grants the parties an additional three days for action after certain forms of service. The effect of renumbering subdivisions of the Civil Rule (whether the amendment to Rule 45 is approved or not) is to make this additional three days unavailable in two classes of cases in which it is now available: those in which service is made by electronic means, and those in which service is made by other means that have been consented to in writing. The renumbering also adds three days in a class of cases in which it was not previously available: those in which service by leaving a paper at a person's home or office. Although the Civil Rules Advisory Committee had discussed whether to eliminate the additional three days for electronic filings, where delivery is instantaneous, it decided to retain the extra time for electronic filings to avoid discouraging them. The Criminal Rules Advisory Committee has not discussed any change in the application of the three day rule.

An additional amendment to Rule 45(c) is needed to preserve the status quo regarding the availability of the additional three days after service by electronic means or other means to which there has been written consent, and to eliminate the additional three days when service is made by leaving the papers at a home or office.

FEDERAL RULES OF CRIMINAL PROCEDURE

A proposed amendment and committee note are attached. (The text assumes that the amendment submitted by the Supreme Court to Congress will go into effect.) The Criminal Rules Committee has approved the proposed technical amendment.

**PROPOSED AMENDMENT TO THE FEDERAL
RULES OF CRIMINAL PROCEDURE***

Rule 45. Computing and Extending Time

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(c) Additional Time After Certain Kinds of Service.

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Whenever a party must or may act within a specified

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period after service and service is made in the manner

5

provided under Federal Rule of Civil Procedure

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5(b)(2)(~~B~~); (C), or (D), (E), or (F), 3 days are added

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after the period would otherwise expire under

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subdivision (a).

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Committee Note

This amendment revises the cross references to Civil Rule 5, which have been renumbered as part of a general restyling of the Federal Rules of Civil Procedure. No substantive change is intended.

*New material is underlined; matter to be omitted is lined through.
Includes amendment to rule that will take effect on December 1, 2007.